



**CALIFORNIA DEPARTMENT
OF EDUCATION**

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TONY THURMOND

STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

June 3, 2024

Dr. Freedom Cheteni, Head of School
The VR School
2635 Park Blvd.
Palo Alto, CA 94306

Via email: freedom@thevrschool.org

Subject: The California Department of Education Final Determination to Terminate the Provision of Emergency Assistance to Non-Public Schools Services to The VR School

Dear Dr. Cheteni:

In view of the rulings from the California Office of Administrative Hearings (OAH), the United States Department of Education (USDE), and the U.S. Court of Appeals for the Ninth Circuit, the California Department of Education (CDE) makes its final decision to terminate the provision of Emergency Assistance to Non-Public Schools (EANS) funds for services at The VR School (VR) and all related expenditures and reimbursements.

From February 27, 2023, through April 20, 2023, the CDE's Audits and Investigations Team (Team) conducted a monitoring review to verify the enrollment information and low-income counts for fiscal year 2019–20, which VR reported to the CDE as part of the application process. The Team was unable to obtain documentation from VR verifying the enrollment information and low-income counts and supporting the expenses previously reimbursed to VR, and thus could not establish that EANS funds were appropriately allocated to and expended by VR. Accordingly, on April 17, 2023, the CDE's Student Achievement and Support Division notified VR that it was suspending its provision of EANS services to VR effective April 17, 2023. See email dated April 17, 2023, giving notice of suspension.¹ On May 20, 2023, after significant consideration and review of available information, the CDE issued a formal determination letter suspending EANS services to VR. See CDE Decision Letter (May 20, 2023). VR appealed CDE's Decision Letter. On July 24, 2023, the CDE requested OAH to set the matter, and a hearing was subsequently scheduled for January 8–12, 2024, in Oakland. See OAH No. 2023070846, Prehearing Conference Order, December 1, 2023. Prior to the hearing, VR filed an interlocutory appeal with USDE. See USDE Docket No. 23-39-

¹ Although Carrie Lopes sent the email giving notice, the decision to suspend services was made by Malia Vella, Deputy Superintendent, Superintendent's Initiatives,

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O. Pending resolution of the interlocutory appeal, on January 5, 2024, OAH entered an order vacating the hearing and setting a new prehearing conference for April 5, 2024. The Chief Administrative Law Judge (CALJ) at USDE dismissed the VR appeal because, among other things, the CALJ determined that the General Education Provisions Act (GEPA), 20 U.S.C. § 1234 *et seq.* does not provide USDE with jurisdiction to hear EANS appeals of non-public schools, such as VR. See Dismissal Order, Docket No. 23-39-O (Jan. 2, 2024).

VR appealed the CALJ's decision to Secretary Cardona, who affirmed "that neither OHA [Office of Hearings and Appeals] nor OALJ [Office of Administrative Law Judges] have jurisdiction to hear this case under GEPA." See Decision of the Secretary, Docket No. 23-39-O (Feb. 2, 2024), p. 2. The Secretary further concluded that because VR is not a recipient of federal funds, USDE does not have jurisdiction to hear the VR appeal. *Id.* ("The [EANS] statute does not articulate any direct relationship between the [U.S.] Department and a non-public school, let alone a right to an administrative appeal.")²

Notably, in addition to dismissing the appeal, the Secretary's decision explained that States are not required "to have a process by which a non-public school may appeal denial of . . . services or assistance under the EANS program [,]" but that "a State educational agency (SEA) **may** establish such a process." See Decision of the Secretary, Docket No. 23-39-O (Feb. 2, 2024), p. 2–3 (emphasis added).

In other words, the Secretary concluded that *if* CDE chose to establish such an appeals process, that process would provide the only appropriate forum for VR's appeal; but if CDE chooses not to establish such a process, CDE would have the authority to make final decisions as to the allocation of EANS services, without the right of appeal.

Following the Secretary's decision, the subsequent OAH ruling reiterated the Secretary's conclusion and remanded the case to CDE. See Remand Order, OAH No. 2023070846 (May 6, 2024). The judge reasoned that "CDE has not established a process for recipients of EANS services to appeal determinations regarding those services [,]" and "if such recipients have appeal rights, there is no authority that [OAH] is the required forum for such appeals." *Id.* at 5.

Together, these rulings affirm that the CDE maintains the sole authority to make a final determination as to the allocation of EANS services to non-public schools, and to determine how to process and review complaints from non-public schools.

² Separately, VR petitioned for review of the Secretary's decision in the U.S. Court of Appeals for the Ninth Circuit. The Secretary moved to dismiss the petition for lack of jurisdiction. On May 21, 2024, the Ninth Circuit granted the Secretary's motion and dismissed VR's petition for review. See *Freedom Cheteni v. U.S. Dep't of Educ.*, No. 24-1353 (9th Cir. 2024) (dismissing petition for review).

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Based on the foregoing, CDE enters its decision to terminate the provision of EANS services to VR for the reasons set forth in the May 20, 2023, Decision Letter. See CDE Decision Letter. This decision is final and not subject to appeal.

Sincerely,

William McGee, Director
Student Achievement and Support Division
California Department of Education

WM:ps